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Letter dated 3 July 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith the position paper of the Socialist Republic of Viet Nam concerning the sovereignty of Viet Nam over the Hoang Sa Archipelago (see annex).

I would be grateful if you would circulate the present letter and the annex thereto as a document of the sixty-eighth session of the General Assembly, under agenda item 76 (a).

(*Signed*) **Le** Hoai Trung
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Permanent Representative of Viet Nam to the United Nations

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Annex to the letter dated 3 July 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

The sovereignty of Viet Nam over the Hoang Sa Archipelago

The Socialist Republic of Viet Nam rejects as completely unfounded, in fact and in law, China's sovereignty claims over the Hoang Sa Archipelago (which China calls "the Xisha Islands", also known as the Paracel Islands) in the annexes to the letters dated 22 May 2014 (A/68/887) and 9 June 2014 (A/68/907) from the Chargé d'affaires a.i. of the Permanent Mission of China to the United Nations addressed to the Secretary-General. Viet Nam affirms that the Chinese claims have no legal or historical foundation.

Historical documents are not in accord with China's claims of sovereignty over the Hoang Sa Archipelago (Paracel Islands).

China has, in its recent communications, referred to some documents as historical evidence to assert the so-called "sovereignty" of China over the Hoang Sa Archipelago of Viet Nam. However, these "documents" cannot be authenticated, lack accuracy and have been interpreted by China in an arbitrary fashion. The documents referred to by China do not by any means prove that China established sovereignty over the Hoang Sa Archipelago when this territory was *terra nullius*. Historical records, by contrast, show that China understood that its sovereignty did not extend to the Hoang Sa Archipelago.

For example, in the last decade of the nineteenth century, when the ships *Bellona* and *Umeji Maru* sank in the Hoang Sa Archipelago and were looted by Chinese fishermen, the Chinese authorities of Guangdong Province of China argued that the Hoang Sa Archipelago were abandoned islands that did not belong to China. The Archipelago was neither administratively attached to any district of Hainan Island of China nor did it fall under the responsibility of any Chinese authority. China, on these grounds, refused to take responsibility for the incident.

In contrast, Viet Nam has publicly provided authentic historical materials proving that Viet Nam established its sovereignty over the Hoang Sa Archipelago when the islands were *terra nullius*. Since at least the seventeenth century, the Nguyen dynasties of Viet Nam had organized activities to exploit resources on islands of the Hoang Sa Archipelago and had undertaken maritime measurements and recorded navigation routes to ensure the safety of navigation by foreign vessels through the waters of the Hoang Sa Archipelago. These activities were well recorded in official documents issued by the Vietnamese dynasties of the time. Said documents are still archived in Viet Nam.

After France and Viet Nam had signed the protectorate treaties of 15 March 1874 and 6 June 1884 respectively, France, on behalf of Viet Nam, continuously exercised Viet Nam's sovereignty over the Hoang Sa Archipelago and protested against China's infringements. France conducted many activities to exercise sovereignty over the Hoang Sa Archipelago, including building and operating lighthouses and meteorological stations, establishing administrative delegations attached to Thua Thien province (Annam) that were responsible for the Archipelago, and granting birth certificates to Vietnamese citizens born in the Archipelago. In

1909, an exploratory mission conducted by Commander Li Zhun out of Guangdong Province of China violated the sovereignty that had been well established by Viet Nam over the Hoang Sa Archipelago and effectively exercised by France on behalf of Viet Nam. France, on behalf of Viet Nam, protested against China's intrusions upon the Hoang Sa Archipelago and reaffirmed that sovereignty over the Hoang Sa Archipelago had been well established by Viet Nam. In response to China's claims over the Hoang Sa Archipelago, France requested that China consent to resolving the issue through international arbitration (note verbale dated 18 February 1937 from France to China), but China refused.

In 1946, the Republic of China under Chiang Kai-shek, taking advantage of the situation at the end of the Second World War, illegally intruded upon Phu Lam (Woody) Island of the Hoang Sa Archipelago. In 1947, France protested against this illegal intrusion and requested that the two parties negotiate and settle the issue through third-party adjudication, which the Republic of China again refused. The Chiang Kai-shek regime later withdrew from Woody Island.

International conferences did not transfer the Hoang Sa Archipelago to China.

Before and after the end of the Second World War, the issue of sovereignty over the Hoang Sa Archipelago was put on the agenda of a number of international conferences. The Cairo Conference, convened from 22 to 26 November 1943, with United States President Franklin D. Roosevelt, British Prime Minister Winston Churchill and Republic of China President Chiang Kai-shek in attendance, adopted the Cairo Communiqué, which aimed at eliminating Japanese administration over all Asia-Pacific islands seized by Japan since the First World War in 1914 and returning to China Chinese territories under Japanese occupation, including Manju, Taiwan and Penghu. Chiang Kai-shek, who represented China at the Conference, said nothing about the Hoang Sa and Truong Sa Archipelagoes.

The Potsdam Conference, convened from 17 July to 2 August 1945, with the leaders of the United States, the United Kingdom and China in attendance, issued the Potsdam Declaration, which reaffirmed the Cairo Communiqué. Chiang Kai-shek, the representative of China at the Conference, again made no mention whatsoever of the Hoang Sa and Truong Sa Archipelagoes.

The San Francisco peace conference, convened from 4 to 8 September 1951, was attended by representatives of 51 countries, including Viet Nam as a member of the French Union. The Prime Minister of the State of Viet Nam, Tran Van Huu, participated in the conference as Head of the Vietnamese delegation. The conference addressed the issue of the devolution of a number of territories in the Asia-Pacific region. At the conference, the Head of delegation of the Soviet Union, Andrei A. Gromyko, put forth a proposal on behalf of China containing 13 items, among which was Japan's recognition of the sovereignty of the People's Republic of China over some islands in the East Sea (South China Sea), including the Hoang Sa Archipelago. With 46 votes against, 3 votes in favour and 2 abstentions, the conference rejected the proposal by the delegation of the Soviet Union.

Immediately after that vote, on 7 September 1951, while addressing the conference, the Head of the Vietnamese delegation, Tran Van Huu, reaffirmed Viet Nam's long-standing sovereignty over the Hoang Sa and Truong Sa Archipelagoes. None of the 51 participating countries protested against the Vietnamese delegation's confirmation of its sovereignty over those archipelagoes.

The Geneva Conference of 1954 on the problem of restoring peace in Indo-China stated that the parties concerned would respect the independence and territorial integrity of Viet Nam, which included the Hoang Sa and Truong Sa Archipelagoes then under the administration of French and Vietnamese forces. Having been a participant at the Geneva Conference, China is well aware of this fact and must respect the international instruments adopted at the Conference.

Article 1 of the Paris Accords of 1973 clearly stated that all countries must respect the independence and territorial integrity of Viet Nam. At that time, the Hoang Sa and Truong Sa Archipelagoes were under the administration of the Republic of Viet Nam and constituted an integral part of Vietnamese territory.

In January 1974, China used military force to occupy the entire Hoang Sa Archipelago. The Government of the Republic of Viet Nam and the Provisional Revolutionary Government of South Viet Nam issued statements to express their positions and to protest China's action. The Government of the Republic of Viet Nam requested that the United Nations Security Council hold an urgent meeting on China's use of force. Under the international law of territorial acquisition, the use of force to occupy a territory cannot create territorial title.

China violated the principle of refraining from the threat or use of force under international law and therefore could not establish sovereignty over the Hoang Sa Archipelago.

China illegally invaded the Hoang Sa Archipelago twice. Taking advantage of France's withdrawal from Viet Nam, in 1956 China invaded and occupied the eastern part of the Hoang Sa Archipelago. This was the first-ever standing occupation of China anywhere in the Hoang Sa Archipelago, which elicited strong protests from the Republic of Viet Nam. In 1959, an attempt by Chinese soldiers disguised as fishermen to land on the western part of the Archipelago was smashed by the forces of the Republic of Viet Nam. Eighty-two Chinese "fishermen" were captured. Both invasions occurred after the sovereignty of Viet Nam over the Hoang Sa and Truong Sa Archipelagoes had been reaffirmed, without any protest, at the above-mentioned international conferences. In 1974, taking advantage of the war in Viet Nam, China attacked and seized control over the Hoang Sa Archipelago from the Government of the Republic of Viet Nam. This was the first time that China had fully occupied the Hoang Sa Archipelago by force.

Under international law, the use of force to occupy the territory of another sovereign state is null and void and can never be the basis for a claim of sovereignty. Viet Nam's sovereignty over the Hoang Sa Archipelago therefore continues and is not displaced by China's occupation by force.

In a memorandum dated 12 May 1988, an official document of the Chinese Ministry of Foreign Affairs, China also clearly asserted the principle of international law that "aggression cannot award sovereignty" over a territory. No country in the world recognizes China's sovereignty over the Hoang Sa Archipelago.

Viet Nam has never recognized China's sovereignty over the Hoang Sa Archipelago.

China has deliberately distorted and misinterpreted history when it refers to the letter signed by late Prime Minister Pham Van Dong in 1958 and other materials and publications published in Viet Nam before 1975 in an attempt to support its

claims over the Hoang Sa Archipelago. The letter made no mention at all of sovereignty over the Hoang Sa and Truong Sa Archipelagoes. The letter concerned maritime entitlements, not territorial issues. In fact, the conclusions that China would draw today from the letter are contradicted by China's own statements, including statements by Chinese leader Deng Xiaoping himself.

In September 1975, 17 years after the release of the letter by the late Prime Minister Pham Van Dong, Chinese Leader Deng Xiaoping told Vietnamese Leader Le Duan in Beijing that "China has sufficient materials to prove that the Xisha Islands (Hoang Sa) and Nansha Islands (Truong Sa) have been part of China's territory since long ago. However, in line with the principle of friendly consultation to resolve differences, the two countries will discuss with each other to address this issue later". Deng Xiaoping's statement was well noted in a Chinese Ministry of Foreign Affairs memorandum dated 12 May 1988 and reflects China's understanding that sovereignty was not settled in favour of China by any previous statement or agreement. Viet Nam requests that China respect this historical fact and seriously engage in negotiations with Viet Nam in respect of the Hoang Sa Archipelago.